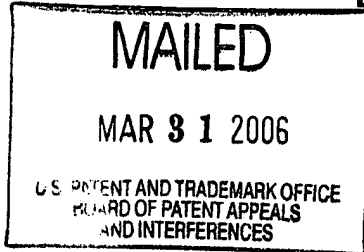


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES



Ex parte BERNARD DUROUX and
DANIEL DUMONT

Appeal No. 2005-0893
Application No. 09/602,923

ON BRIEF

Before FRANKFORT, PATE, and BAHR, Administrative Patent Judges.
PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-7. Claim 8-15 have been previously withdrawn from consideration. Accordingly, claims 1-7 are the only claims remaining for consideration.

The claimed subject matter is directed to an exterior rear view mirror which can be pivoted by an electric motor at two discrete speeds.

The claimed subject matter may be further understood with reference to claim 1, appended to appellants' brief.

The references of record relied upon by the examiner as evidence of obviousness are:

Enomoto et al. (Enomoto)	5,012,693	May 7, 1991
Valentino (Valentino)	5,953,167	Sep. 14, 1999
Schenk et al. (Schenk)	6,204,753	Mar. 20, 2001
Tomiyoshi	JP 8-26030	Jan. 8, 1996

The Japanese document is understood by reference to a machine translation provided by the Japanese Patent Office.

THE REJECTIONS

Claims 1, 6 and 7 stand rejected under 35 U.S.C. §103(a) as unpatentable over Enomoto in view of Tomiyoshi or Schenk.

Claims 1-7 stand rejected under 35 U.S.C. §103 (a) as unpatentable over Valentino in view of Tomiyoshi or Schenk.

For a complete understanding of the examiner's rejections, reference is made to the examiner's answer.

For a further understanding of appellants' argument with respect to the rejections, reference is made to the brief and reply brief.

OPINION

The following are our findings of fact with respect to the scope and content of the prior art. Appellants have stated that claims 1-7 stand or fall together. We limit our consideration to claim 1 on appeal.

We have carefully considered the subject matter of claim 1 and the prior art cited by the examiner, and it is our legal conclusion that the examiner has established a *prima facie* case of obviousness with respect to claim 1. Since claim 1 falls, we will sustain the rejections of all claims on appeal. Our reasons follow.

Enomoto discloses a pivoting side view mirror for an automobile having a base 16, a housing 14, a reflective member 12, and an electric motor 30. Enomoto does not disclose two discrete speeds.

Valentino discloses a pivoting side mirror with base 128, housing 124, reflective member 126, and a servo-motor 122. Valentino does not disclose two discrete speeds.

Schenk discloses a side view mirror for a motor vehicle with collision protection. It is the goal of Schenk to pivot the side mirror of the vehicle close to the vehicle in the event that an obstruction is detected in the path of the mirror. In the first embodiment of Schenk, a controller 7 operates with a conventional electric motor 2 to control the "folding speed of the side view mirror." Accordingly, it is our finding that Schenk discloses multiple operating speeds for the side view mirror, and the speed utilized is based on the closing speed of the oncoming obstruction.

Appellants' claim 1 is of the open-ended comprising type. As such it is not limited to only two discrete speeds. Thus, even if the motor 2 of Schenk is infinitely adjustable, the various speeds of Schenk are regarded as a plurality of discrete speeds and are not precluded by appellants' claim language. The disclosure of Schenk is merely a

disclosure of an electric motor for operating a mirror having at least two discrete speeds, which is all the open-ended claim language requires.

Furthermore, note the language of Schenk claim 13, wherein it is claimed that the Schenk device has a first speed and a second speed and the second speed is greater than the first speed. It goes without saying that this is an express teaching that tracks the language of Appellants' claim 1. In view of this language, it is our finding that Schenk would have suggested to one of ordinary skill at the time the invention was made an actuator with two discrete speeds.

Additionally, appellants in the main brief discuss the second embodiment disclosed by Schenk. This embodiment features a slow actuator 11 which has a normal speed and a rapid actuator 12 with a spring motor to rapidly fold the mirror in case of a collision occurring soon. This embodiment, as disclosed, has two discrete speeds—normal and rapid. In our view this is a clear teaching of pivoting a mirror at two discrete speeds. Inasmuch as Schenk teaches that an electric motor can operate a mirror at more than one speed (first embodiment) and that it is highly desirable for safety reasons to operate a mirror pivoting mechanism at two discrete speeds (second embodiment), it is our legal conclusion that Schenk is suggestive of operating a mirror pivoting mechanism using an electric motor operated at two discrete speeds.

Furthermore, we are of the view that it would have been obvious to apply this teaching of a two speed mirror to the mirrors disclosed in Enomoto or Valentino for the reason

disclosed by Schenk, namely to safely pivot the mirror out of the way at a greater than normal speed in case of an imminent collision.

We have carefully reviewed appellants' arguments in the brief and the reply brief. We do not credit the argument that the section 103 rejections, at least to the extent they are based on the combined teachings of Enomoto and Valentino with Schenk, lack suggestion or motivation or are based on impermissible hindsight.

The section 103 rejections of all claims on appeal is affirmed.

AFFIRMED


JENNIFER D. BAHR
Administrative Patent Judge

)
)
)
)
)
)
) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES

WFP/lp

Appeal No. 2005-0893
Application No. 09/602,923

Page 7

WARN IP LAW OFFICE
PO BOX 70098
ROCHESTER HILL, MI 48307